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January 5, 1996

Honorable Reed Hundt, Chairman  
Federal Communications Commission  
Washington, D.C. 20554

JAN 11 1996  
FEDERAL COMMUNICATIONS COMMISSION

Re: Network/Affiliate Programming Practices  
MM Docket No. 95-92

Dear Chairman Hundt:

In Comments and Reply Comments filed in this proceeding, National Broadcasting Company, Inc. ("NBC") expressed the broad, overall view that government micro-management of the network/affiliate relationship in today's diverse, competitive marketplace is unnecessary and contrary to the public interest. The proposition that local stations are ultimately responsible for the programs they air is well-established and unassailable. NBC fully endorses this bedrock principle of licensee responsibility; we simply believe there is no need for a government rule to establish or enforce it. If the Commission nonetheless decides not to repeal, but instead to modify or clarify the network/affiliate rules, it should take great care not to disrupt or call into question the validity of the new agreements between NBC and almost 90% of its affiliates.<sup>1</sup> These agreements were carefully negotiated over many months, are consistent with the requirements of the existing rules and reflect the mutual desires of the parties. If the contractual arrangements NBC and its affiliates have worked through over the past 18 months are upset by the outcome of this proceeding, the unfortunate consequence would be confusion and uncertainty for hundreds of stations.

In our discussions on December 5, 1995, you asked whether the record in this proceeding contains enough information on the basic terms of NBC's new contractual arrangements with its affiliates to allow the Commission to avoid inadvertently undermining those arrangements in any decision to modify or clarify its rules. The purpose of this letter is to provide that basic information.

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<sup>1</sup> Negotiations with the remaining affiliates are continuing and we assume agreements containing substantially similar terms will be reached with these stations in the near future.

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### The Process

The renegotiation of NBC's basic affiliation contract began soon after the announcement of the Fox/New World deal in May, 1994. First, representatives of NBC and the NBC Affiliate Board discussed and agreed to the basic terms of the new agreement. Then, individual negotiations were held between NBC and each affiliate owner. While the basic building blocks of the agreements are substantially the same across affiliates, many of the specific provisions were modified during the course of the individual negotiations to meet the needs and demands of individual stations.

### The Basic Provisions

The basic terms of the new NBC affiliation agreement include the following:

1. NBC Programming. For the first time, NBC has committed to continue to program the hours it currently programs, including the network time periods during prime time, late night, news and daytime. Any future modification in the amount or timing of regularly scheduled NBC Network programs must be negotiated by the parties.
2. Local Commercial Announcements. NBC has agreed that the average weekly number of minutes available for the affiliates' local commercial announcements in and adjacent to regularly scheduled NBC programming shall not be less than ninety-five percent (95%) of the average weekly number of minutes for the applicable daypart during the 1993-94 broadcast season.
3. Preemptions. Each station retains the ultimate discretion to determine which programs it broadcasts. The contract expressly recognizes the station's right to reject any NBC program which it believes to be unsatisfactory or unsuitable, and to substitute a program which the station believes is of greater local or national importance. However, the contract contemplates economic consequences if an affiliate chooses to preempt an excessive amount of Network programming for reasons unrelated to its licensee responsibility.

The terms of the new agreement expressly give the station an "unqualified right" to preempt NBC Network programming for live local news coverage. The station may also preempt or fail to clear any program it believes is unsuitable for its community. Beyond these news and unsuitability preemptions, NBC and each individual affiliate have agreed that the station will have a "basket" of a specified number of hours of Network programming that it can preempt during each broadcast year covered by the contract. The number of hours varies by contract, and is based primarily on the station's past preemption levels for public affairs programming and projected local programming needs. In the event the station's preemptions and non-clearances exceed this agreed-to number of hours (again, with live local news coverage and unsuitable

program preemptions not factored into the calculation), then NBC has the right to deduct or offset from the compensation payments due the station an amount equivalent to NBC's loss in net advertising revenues attributable to the station's failure to carry the program.

4. Station Compensation. Station compensation rates were renegotiated at substantially higher levels. NBC's total station compensation payments to affiliates are twice as high today as they were in 1993.

5. Term. The term of the new affiliation agreements generally ranges from seven to ten years. NBC proposed ten year terms, but some affiliates were reluctant to commit for that period of time, and negotiated for and obtained shorter contracts. NBC can only terminate the agreement if there is a "material breach" by the affiliate, a major change in the station's operations, or the affiliated station is sold and NBC does not consent to assignment of the agreement.

These contractual provisions strike the appropriate balance between the unassailable principle of licensee responsibility for the programs a station broadcasts and the network's need for sufficient clearances to support the enormous cost of programming. Both the NBC Network and its affiliates have committed to a mutually advantageous, long term relationship that achieves this balance, and provides each with stability and certainty in their partnership for the next decade. NBC's new affiliation contracts will be the foundation of NBC's broadcast activities for the next decade. It would be enormously destructive if the Commission modified or interpreted the existing rules in a way that created uncertainty about the arrangements described above. We strongly urge the Commission to avoid such a result.

Sincerely,

A handwritten signature in black ink that reads "Rick Cotton". The signature is fluid and cursive, with the first name "Rick" and last name "Cotton" clearly distinguishable.

Richard Cotton

cc: Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Susan Ness  
Commissioner Rachelle B. Chong  
Roy J. Stewart, Chief, Mass Media Bureau  
Douglas W. Webbink, Chief, Policy and Rules Division  
William F. Caton, Acting Secretary